

ORDER SHEET

ITA NO.700 OF 2004  
IN THE HIGH COURT AT CALCUTTA  
Special Jurisdiction(Income Tax)  
ORIGINAL SIDE

C. I. T. KOLKATA - II  
Versus  
ORIENT PAPER & INDUSTRIES LTD.

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE ARINDAM SINHA

Date : 6th February, 2015.

MR.R.K.CHOWDHURY, ADVOCATE FOR APPELLANT  
MR.SIDDHARTH DAS, MR.ASIM CHOUDHURY,  
ADVOCATES FOR RESPONDENT

The Court : The appeal is directed against a judgment and order dated 6<sup>th</sup> May, 2004 by which the learned Tribunal allowed plantation expenditures as a revenue expenditure following its earlier judgment in the case of the assessee itself. The revenue has come up in appeal. The Assessing Officer disallowed the expenditure for the following reasons;

*“3.1. The assessee incurred a sum of Rs.14,78,231 on ucalyptus tree plantation. The assessee is a manufacturer*

of papers. The course of manufacture of papers entails pollution by chimneys effluent discharge and use of chemicals. The paper factory is basically based on forest wood. As bamboo and trees are used in the paper industries the ecological and environmental balances are destroyed, it was laid down in the national Forest Policy of 1988 that all forest based industries must take up plantation so that forest ecology is maintained. The discharge of effluent water used in manufacture causes erosion of land in the catchment areas. Plantation of tree is one of the methods of controlling atmospheric pollution. The plantation being developed in the immediate vicinity of the factory is also used as disposal media for waste generated during the manufacturing process, it is estimated that 1 hectare of mixed waste growing hard plantation has carbon take up capacity of 7.5 tons of carbon per acre. This provides a sink for green house gas like carbon dioxide. The land disposal technology called "high rate evapotranspiration system" was developed by the National Environment Research Institute, Nagpur. The trees planted around the factory was done on the land including waste land. When the trees outgrow and started losing greenery the same are used as raw materials. It was further submitted by the assessee that

*different states have set up special pollution Board and other environmental agency to monitor and ensure that each industry minimise the atmospheric pollution and comply with the directions of the board to the industries. The plantation expenditure were incurred for observing the guidelines and directions given by this agency in respect of the assessee's manufacturing unit. It is, therefore, urged that the expenditure should be allowed as deduction from the total Income.*

*3.2 It is found that Ld.CIT WB-I in his order u/s 263 for the asst. year 1993-94 has held that such expenditure is not allowable in computing the total Income of the assessee. It is also found that the amount was disallowed in the asst. year 1996-97. ITAT has allowed said expenditure. However, the issue has not become final. Following the reasons given by the CIT in his order for the asst.year 1993-94 and the reasons given in the asst.order for the asst.year 1996-97, I disallow the sum of Rs.14,78,231.”*

The C.I.T.(Appeals) however, reversed the order disallowing the expenditure holding that the expenditure was allowable

under Section 37. In an appeal from the order of the C.I.T.(Appeals) preferred by the revenue, the Appellate Tribunal concurred with the views of the C.I.T.(Appeals). The revenue has once again come up in appeal proposing the following questions;

*“a) Whether in the facts and in the circumstances of the case, the Learned Income Tax Tribunal erred in law in not appreciating that the payments under VRS inures long term advantage to the assessee having capital expenditure in nature and in confirming the order of the Deputy Commissioner of Income Tax(Appeal-IV) whereby the Deputy Commissioner of Income Tax(Appeal-IV) set aside the disallowance by the Assessing Officer the claim of the Respondent/ Assessee on account of VRS payments as revenue expenditure?”*

*b) Whether in the facts and in the circumstances of the case, the Learned Income Tax Tribunal erred in law in not appreciating that the pre-plantation expenditure are of capital nature and in confirming the order of the Deputy Commissioner of Income Tax (Appeal-IV) allowing the pre-plantation expenditure claimed by the respondent/ assessee as revenue expenditure?”*

Mr.Das, learned advocate appearing for the assessee-respondent drew our attention to a judgment of the Madhya Pradesh High Court in the case of Hindustan Electro Graphites Ltd. Vs. Commissioner of Income-Tax reported in (1996) 218 ITR 688 wherein the following views were taken;

*“Held, that the expenditure did not result in any gain to the assessee and did not enhance the value of the establishment. The expenditure was intended to make the atmosphere pollution-free. The Tribunal did not record any categorical finding that the expenditure resulted in any appreciation of the assets or was unrelated to the business activities of the assessee. Plantation in such factory is necessary to avoid pollution of environment and create congenial atmosphere. The Tribunal disallowed the expenditure on wrong premises. The amount expended was wholly and exclusively for the purposes of the business and was not in the nature of capital expenditure or personal expenses of the assessee. The amount was deductible under section 37 of the Income-tax Act, 1961.”*

Mr.Chowdhury, learned advocate appearing for the appellant did not dispute the correctness of the opinion expressed by the Madhya Pradesh High Court. In that view of the matter, the question no.(b) is answered in the negative.

In so far as the question no.(a) is concerned, Mr.Das once again drew our attention to the judgment of Commissioner of Income-tax Vs. Simpson and Co. Ltd. reported in (1998) 230 ITR 703 which was also considered by the learned Tribunal, wherein the following the views were taken.

*“Held, that the amount paid to employees under the Voluntary Retirement Scheme was an allowable deduction as the expenditure was incurred on grounds of commercial expediency and the expenditure was laid out wholly and exclusively for purposes of the business of the assessee.”*

Mr.Chowdhury did not dispute the correctness of the views expressed in the aforesaid case.

Therefore, the question no.(a) was really not pressed. The appeal is thus disposed of.

(GIRISH CHANDRA GUPTA,J.)

(ARINDAM SINHA,J.)

sb.